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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/281,474	03/30/99	RAJOPADHYE M	DM-6958

HM12/1220

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EXAMINER	
JONES, D	
ART UNIT	**PAPER NUMBER**
1619	12

DATE MAILED: 12/20/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/281,474	RAJOPADHYE ET AL.	
	Examiner	Art Unit	
	D. L. Jones	1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-51* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claims *1-51* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some * c)☐ None of the CERTIFIED copies of the priority documents have been:

1.☐ received.

2.☐ received in Application No. (Series Code / Serial Number) _____ .

3.☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

14) ☐ Notice of References Cited (PTO-892)
15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
17) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
18) ☐ Notice of Informal Patent Application (PTO-152)
19) ☐ Other: .

RESTRICTION INTO GROUPS

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-10, 50, and 51, drawn to compounds and methods wherein the compound comprises a chelator and peptide-targeting moiety, classified in class 424, subclass 1.69.

II. Claims 11-37, 48, and 49, drawn to compositions and methods wherein the compositions comprise a metal chelator and a targeting moiety, classified in class 534, subclass 7.

III. Claims 38-43, 46, and 47, drawn to a surfactant, and targeting moiety, classified in class 516, subclass 22.

IV. Claims 44 and 45, drawn to an ultrasound agent, classified in class 424, subclass 9.5.

2. Inventions II III, IV, and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the different inventions while all encompassed under the very broad concept of pharmaceutical agents and methods of use thereof, the requirements for examining each group is different. In other words, four distinct groups of inventions are generated that are unrelated and non-obvious over one another. As a result, separate search considerations are involved which would impose a burden if unrestricted since the groups classify in four different classes and/or subclasses.

3. The above groups themselves are inclusive of patentably distinct subject matter. Accordingly, along with the election of one of the above groups, the following action is also taken.

4. The inventions are distinct from one another for the reasons set forth above. Hence, since these inventions are distinct and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

ELECTION OF SPECIES

5. Claims 1-51 are generic to a plurality of disclosed patentably distinct species comprising, for example, (1) the compounds and method of use of the compounds of Group I as set forth in independent claim 1; (2) the compositions and method of use of the compositions of Group II as set forth in independent claim 11; (3) the complexes of independent claim 38; and (4) the agents of independent claims 44 and 45. Furthermore, a burdensome search would be necessary because of the numerous variables and substitutents present in the invention. In particular, the targeting moiety may be a peptide or peptide mimetic selected from EGFR, FGFR, PDGFR, Flk-1/KDR, Flt-1, Tek, Tie, neuropilin-1, endoglin, endosialin, and Ax1 to name a few. The variable Q may be a peptide independently selected from the group defined in claim 3 having variables L, M, K, R1, R2, R3, R4, R5, K', and/or M' or those set forth in claim 6. The

chelator, Ch, may be selected from those in claim 3 (see pages 178-179) containing the variables A1-A8 and E.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Notes: *(A) The Examiner respectfully requests that the Applicant assign each variable the appropriate value when electing a species (i.e., X = hydrogen; Z = nitrogen; Y = -CH3; etc.); and*

(B) The election of species has to be within the elected group as set forth above.

6. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. Upon the election of a single disclosed species (e.g., the first species of claim 17), a generic concept inclusive of the elected species will be identified by the Examiner for examination along with the elected species. Moreover, whatever, specific complex is ultimately elected, Applicant's are required to list all claims readable thereon.

8. A telephone call was not made to request an oral election to the restriction requirement due to the complexity of the species and restriction above.

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (703) 308-4640. The examiner can normally be reached on Monday - Friday, 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on (703) 308- 2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

D. L. Jones
Primary Examiner
Art Unit 1619

dlj
December 12, 2000